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8
9 Attorneys for Plaintiffs

10 MONTANA FOURTEENTH JUDICIAL DISTRICT COURT, MUSSELSHELL COUNTY

11 ROBERT NEWMAN, individually, as Personal
12 Representative on behalf of THE ESTATE OF
13 JACKIE ANN NEWMAN, and on behalf of
14 STEPHANIE NEWMAN and MANDY
15 NEWMAN,

16 Plaintiffs,

17 vs.

18 FARMERS ALLIANCE MUTUAL
19 INSURANCE COMPANY,

20 Defendant.

Cause No. DV-17-11

Judge Randall I. Spaulding

**NOTICE OF A LAWSUIT AND
REQUEST TO ACKNOWLEDGE
AND WAIVE SERVICE OF A
SUMMONS**

21 TO: Farmers Alliance Mutual Insurance Company
22 By and Through
23 Montana Insurance Commissioner
24 P O Box 4009
25 Helena, MT 59604:

Why are you getting this?

26 A lawsuit has been filed against you, or the entity you represent, in this court under
27 the number shown above. A copy of the complaint is attached.

1 This is not a summons, or an official notice from the court. It is a request that, to
2 avoid expenses, you acknowledge and waive formal service of a summons by signing and
3 returning the enclosed acknowledgment and waiver. To avoid these expenses, you must
4 return the signed acknowledgment and waiver within 21 days (42 days if you are the State of
5 Montana, a state agency, or a state officer or employee) from the date shown below, which is
6 the date this notice was sent. Two copies of the acknowledgment and waiver are enclosed,
7 along with a stamped, self-addressed envelope, or other prepaid means for returning one
8 copy. You may keep the other copy.

9 **What happens next?**

10 If you return the signed acknowledgment and waiver, I will file it with the court. The
11 action will then proceed as if you had been served on the date the waiver is filed, but no
12 summons will be served on you and you will have 30 days from the date you sign the
13 acknowledgment and waiver to answer the complaint.

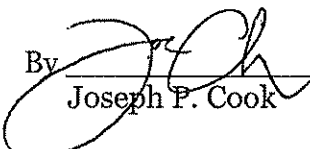
14 If you do not return the signed acknowledgment and waiver within the time
15 indicated, I will arrange to have the summons and complaint served upon you, and I will ask
16 the court to require you, or the entity you represent, to pay the expenses of making service.

17 Please read the enclosed statement about the duty to avoid unnecessary expenses.

18 I certify that this request is being sent to you on the date below.

19 DATED this 16th day of March, 2017.

20 RAGAIN & COOK, P.C.

21 By 
22 Joseph P. Cook
23 *Attorneys for the Plaintiff*
24
25
26
27

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CLERK OF THE
DISTRICT COURT
DANE HANVONSON

2017 MAR 13 PM 2 44

FILED
Teresa G Fauth

BY _____
CLERK/DEPUTY

Cause No. DV - 17 - 11

Judge Randall I. Spaulding

COMPLAINT AND DEMAND
FOR JURY TRIAL

21 For their complaint, Plaintiffs, through counsel, allege and state, upon information
22 and belief:

23 INTRODUCTION

24 1. This is a civil bad faith action to recover damages caused by the Defendant's
25 unreasonable, incomplete and wrongful denial of third-party and first-party claims of the
26 Newman family following the death Jackie Ann Newman.
27

COPY

PARTIES

2. Robert Newman is the duly appointed Personal Representative of the Estate of Jackie Ann Newman. Robert has been, at all times relevant, a resident of the town of Melstone, Musselshell County, Montana. Robert and Jackie were married on May 13, 1987, and they were married at the time of Jackie's death on October 15, 2015. They had two daughters, Stephanie and Mandy, who were 24 and 22 years old respectively at the time of Jackie's death. Robert and Jackie were named insureds under Defendant Farmers Alliance Mutual Insurance Company's Policy Number AR209246APV01 (Newman Policy) on October 15, 2015. The Newman's 2013 Dodge Ram Pickup truck was insured under the policy as well.

3. Defendant Farmers Alliance Mutual Insurance Company ("FAMIC") is Kansas company with its principal office located at 1122 N Main Street, McPherson, Kansas. FAMIC was at all times relevant authorized to transact the business of insurance in the State of Montana.

FACTUAL BACKGROUND

4. On October 15, 2015, shortly after 5 p.m., Mr. James C. Crowley, while driving the Newman's 2013 Dodge Ram 3500 dually pickup truck pulling a 28-foot horse trailer westbound on U.S. Highway 12 in Musselshell County, Montana, struck and killed Jackie Newman while she was operating an ATV.

1 5. On October 15, 2015, FAMIC insured Mr. Crowley while operating the
2 Newman's pickup truck, pursuant to the Newman Policy, with policy limits of \$500,000.
3

4 6. On October 15, 2015, Mr. Crowley was also covered by policies issued by QBE
5 Farmers Union Insurance and Farmers Union Mutual Insurance Company.
6

7 7. Just prior to the collision, Jackie and Robert Newman, along with Justin
8 Kincheloe and another hired hand, Pedro, were moving cow-calf pairs across US Highway
9 12 from their home corrals into a pasture on the north side of the highway near mile marker
10 206.
11

12 8. Mr. Crowley had been working with the Newmans prior to the collision, and
13 he knew the route and location of where the cattle and workers would be crossing the
14 highway.
15

16 9. Mr. Crowley approached mile marker 206 with his vision allegedly obstructed
17 by sun glare and his attention admittedly distracted by a cookbook his passenger and
18 fiancé, Stephanie Newman, was looking through. Mr. Crowley had just given Stephanie the
19 book as a present from his mother.
20

21 10. At the same time, a calf ran up towards the north shoulder of the highway.
22

23 11. Jackie, on an ATV, followed the calf in an attempt to keep it off the roadway.
24

25 12. Jackie's ATV was on the fog line, completing an arc like maneuver when she
26 was struck from behind by the truck operated by Mr. Crowley.
27

 13. The collision killed Jackie.

1 14. Mr. Crowley saw neither the calf nor Jackie until immediately prior to impact.

2 15. Robert Newman witnessed the entire event from horseback.

3 16. Justin Kincheloe witnessed the entire event from horseback.

4 17. Stephanie Newman was inside the cab of the truck the entire time leading up
5 to the collision.
6

7 18. Mr. Crowley immediately drove into Melstone following the collision because
8 there was no cell phone service at the scene. Mr. Crowley called 911 dispatch and reported
9 he was travelling 60-65 mph at the time of the collision.
10

11 19. The Montana Highway Patrol investigated the collision, and produced a
12 report identified by Crash Number 50074386-03 (MHP Report).
13

14 20. Mr. Newman made a claim for insurance benefits on or about November 2,
15 2015 to FAMIC, and the claim was assigned to Ms. Kathy Brick for claim handling.
16

17 21. Ms. Brick's liability investigation consisted entirely of reviewing the MHP
18 Report, interviewing Mr. Crowley, and viewing scene and vehicle photos.
19

20 22. Ms. Brick knew Mr. Crowley and Stephanie Newman were engaged to be
21 married at the time the claim was made, when she was interviewing Mr. Crowley, and
22 when she denied the claim.
23

24 23. In the MHP Report, the investigating officers concluded "[t]he factors in this
25 crash include the inattentiveness of both drivers, and the glare of the sun in Mr. Crowley's
26 eyes." Also, the officer reported "Mr. Crowley was distracted by the cookbook his
27

1 passenger, Stephanie Newman, was looking at in the interior of the vehicle. Mr. Crowley
2 looked down at the cookbook just prior to the crash.”
3

4 24. Prior to denying the claim, Ms. Brick did not conduct, and did not attempt to
5 conduct, recorded statements of any eye witnesses, including Robert Newman, Stephanie
6 Newman or Justin Kincheloe.
7

8 25. Prior to denying the claim, Ms. Brick did not interview the Montana Highway
9 Patrol investigating officers.
10

11 26. Prior to denying the claim, Ms. Brick did not request any scene reconstruction.
12

13 27. Ms. Brick conducted an investigation simply to support a denial, and failed to
14 properly consider information to support a finding of liability on Mr. Crowley’s behalf.
15

16 28. On December 16, 2015, without conducting a reasonable investigation, Ms.
17 Brick issued an outright denial of Robert Newman’s first-party claim for medical payment
18 benefits, the Newman family’s third-party claims against Mr. Crowley.
19

20 29. Ms. Brick never notified the Newman family that Mr. Crowley possessed
21 additional insurance coverage through other carriers.
22

23 30. Following the December 16, 2015 denial, Robert Newman reported a
24 complaint to the Montana State Auditor’s office because he believed FAMIC’s denial was
25 unreasonable and erroneous.
26
27

1 31. Ms. Brick responded on FAMIC's behalf to the Montana State Auditor by
2 letter on February 11, 2016, and only listed facts to support a denial and did not describe
3 any consideration of facts contrary to her conclusion.
4

5 32. The Estate of Jackie Newman, Robert Newman, Stephanie Newman and
6 Mandy Newman have suffered and continue to suffer emotional, mental and financial
7 damages caused by FAMIC's actions including its unreasonable and perfunctory
8 investigation.
9

10 **COUNT ONE - BAD FAITH BREACH OF CONTRACT**
11

12 **(on behalf of Robert Newman, Individually and as Personal Representative of the Estate**
13 **of Jackie Newman)**

14 32. Plaintiffs incorporate Paragraphs 1 through 31 as if fully set forth herein.

15 33. The contract of insurance between FAMIC and Robert and Jackie Newman
16 involved a special relationship as that term is defined under Montana Law.
17

18 34. FAMIC had a duty to act honestly and observe reasonable commercial
19 standards of fair dealing and trade with respect to its contract of insurance with Robert and
20 Jackie Newman.
21

22 35. FAMIC used its discretion conferred by the contract of insurance to act
23 dishonestly and outside of the accepted commercial practices. This conduct by FAMIC
24 deprived Robert Newman and the Estate of Jackie Newman of the benefits of said contract
25 of insurance.
26

27 36. FAMIC violated its duties and obligations owed to Robert Newman and the

1 Estate of Jackie Newman by virtue of its insuring agreement and as such breached its
2 contract of insurance with them by failing to timely and completely provide insurance
3 coverage for the claimed medical payment benefits and failing to reasonably and fairly
4 investigate the liability claim under the Newman Policy. FAMIC's conduct in this regard
5 was malicious as that term is defined in punitive damage law in Montana.
6

7
8 37. As a result of FAMIC's wrongful failure to perform the insurance contract in
9 good faith pursuant to Montana law, and as promised and represented, Robert Newman
10 and the Estate of Jackie Newman have suffered and continue to suffer substantial injury and
11 damage for which FAMIC is liable for all damages available under Montana law including
12 but not limited punitive and compensatory damages.
13

14
15 **COUNT TWO - UNFAIR TRADE PRACTICES**

16 (on behalf of all Plaintiffs)

17
18 38. Plaintiffs incorporate Paragraphs 1 through 37 as if fully set forth herein.

19 39. FAMIC owed duties to Plaintiffs under Montana law embodied in the Unfair
20 Trade Practices Act, §33-18-201, MCA, et. seq. ("UTPA"), which governs the conduct and
21 activities of individuals, as well as insurance companies in this state in their relationships
22 with both insureds and third parties.
23

24 40. FAMIC breached its duties and obligations owed to Plaintiffs by its violations
25 of Montana's Unfair Trade Practices Act, to include, but not limited to: (1) refusing to pay
26 claims without conducting a reasonable investigation based upon all available information;
27

1 (2) failing to adopt and implement reasonable standards for the prompt investigation of
2 claims arising under insurance policies; (3) misrepresenting pertinent facts or insurance
3 policy provisions relating to coverages at issue; (4) failing to promptly provide a reasonable
4 explanation of the basis in the insurance policy in relation to the facts or applicable law for
5 denial of a claim or for the offer of a compromise settlement.
6

7
8 30. FAMIC's actions, as described in the preceding paragraphs, are malicious, as
9 that word is given efficacy by Montana law, and such malicious breaches of duties and
10 obligations by FAMIC entitle Plaintiffs to an award of all compensatory damages allowed
11 by Montana law, as well as punitive damages of sufficient size and monetary amount,
12 under the financial circumstances of the Defendant, and its conduct and misconduct in this
13 entire matter, so as to properly discharge and serve the salutary purposes of punitive
14 damages under Montana law.
15
16

17 **PRAYER FOR RELIEF**

18
19 WHEREFORE, Plaintiffs make demand against Defendant for all compensatory and
20 other damages available under Montana law together with interest, and an award of
21 substantial punitive damages, together with attorney fees, all of which the Court and the
22 jury might find appropriate and fair under these circumstances.
23

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs demand trial by jury of all of the issues in this action.
26
27

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9 **ORIGINAL**

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SUMMONS

21 TO: Farmers Alliance Mutual Insurance Company, Defendant.

22 A lawsuit has been filed against you.

23 Within 21 days after service of this summons on your or (42 days if you are the State
24 of Montana, a state agency, or a state officer or employee), you must serve on the plaintiff an
25 answer to the attached complaint or a motion under Rule 12 of the Montana Rules of Civil
26 Procedure. Do not include the day you were served in your calculation of time. The answer
27